

REMARKS

This Amendment is in response to the Office Action mailed on April 5, 2006 in which claims 1, 3, 5-9, 11, 13-15, 17, 21, 23-25, 27, 29, 30, 32-34, 36-41, 62-65, 68, and 69 were rejected. With this Amendment, claims 1, 32, and 39 are amended. The Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

I. Rejection of Claims 1, 3, and 5-6 Under 35 U.S.C. § 112

On page 2 of the Office Action, the Examiner rejected claims 1, 3, and 5-6 under 35 U.S.C. § 112 as being indefinite. The Applicant has amended claim 1 to remove the limitation “wherein the artificial spinal disc comprises a core disposed between two plates and wherein one of the two plates is removed prior to being coupled with the structure.” In view of the amendment to claim 1, the Applicant presents claims 1, 3, and 5-6 for reconsideration and allowance.

II. Rejection of Claims 1, 3, and 5-6 Under 35 U.S.C. § 102(b) as Anticipated by Downey

On page 3 of the Office Action, the Examiner rejected claims 1, 3, and 5-6 under 35 U.S.C. § 102(b) as anticipated by Downey, U.S. Patent No. 5,147,404. The Applicant has amended claim 1 to recite “a pedicle screw retainer coupled to at least one of the endplate and the support.” Support for the “pedicle screw retainer” is provided in the specification, as filed, for example at paragraphs [0035] and [0038] and FIG. 1 (see pedicle screws 34 and pedicle screw retainer 18 according to an exemplary embodiment). Downey does not identically disclose a pedicle screw retainer. In contrast, Downey discloses a “vertebra prosthesis 10” that is anchored in place by “threaded members 28 of replacement discs 30.” See Downey at col. 6, lines 38-40 and Fig. 2. In view of the amendment to independent claim 1, the Applicant respectfully requests reconsideration and allowance of independent claim 1 and corresponding dependent claims 3 and 5-6.

III. Rejection of Claims 1 and 3 Under 35 U.S.C. § 102(b) as Anticipated by Buttermann

On page 3 of the Office Action, the Examiner rejected claims 1 and 3 under 35 U.S.C. § 102(b) as anticipated by Buttermann, U.S. Patent No. 5,827,328. As discussed above, the Applicant has amended claim 1 to recite “a pedicle screw retainer coupled to at least one of the endplate and the support.” Buttermann does not identically disclose a vertebral prosthesis having a pedicle screw retainer. In contrast, Buttermann discloses a “intervertebral prosthetic device 10 [that] is designed to replace a damaged natural disc.” The “prosthetic device 10 has a first fixation member 14, [and] a second fixation member 16” that “maintain[] the prosthesis device in stable relationship in the operative intervertebral joint.” See Buttermann at col. 4, lines 28-53 and Fig. 1. In view of the amendment to independent claim 1, the Applicant respectfully requests reconsideration and allowance of independent claim 1 and corresponding dependent claim 3.

IV. Rejection of Claims 11, 13-15, 17, 21, 23-25, 27, and 29-30 Under 35 U.S.C. § 102(b) as Anticipated by Rabbe et al.

On page 3 of the Office Action, the Examiner rejected claims 11, 13-15, 17, 21, 23-25, 27, and 29-30 under 35 U.S.C. § 102(b) as anticipated by Rabbe et al., U.S. Patent No. 5,702,453. Independent claim 11 recites “a pedicle screw retainer coupled to at least one of the shaft and the endplate.” Independent claim 21 recites “a pedicle screw retainer coupled to at least one of the shaft, the first endplate, and the second endplate.” Rabbe et al. does not identically disclose a vertebral prosthesis having a pedicle screw retainer. In contrast, Rabbe et al. discloses a “vertebral body replacement assembly 20” having “spikes (91, 120)” or a “support assembly 55” to hold the assembly in place. See Rabbe et al. at col. 6, lines 41-46; col. 8, lines 43-52; and Fig. 3. The Examiner identifies “screw retainer (e.g. 46),” but the “threaded apertures 46” are designed to receive “spikes 120” rather than pedicle screws. See Rabbe et al., col. 6, lines 41-43. Because Rabbe et al. does not identically disclose each and every element of independent claims 11 and 21, independent claims 11 and 21 and corresponding dependent claims 13-15, 17, 23-25, 27, and 29-30 are not anticipated under 35 U.S.C. § 102(b) and are presented for reconsideration and allowance.

V. Rejection of Claims 7-9, 11, 13-15, 17, 21, 23-25, 27, 29-30, 32-34, 36, 38-41, and 61-62 Under 35 U.S.C. § 103(a) Based Upon Rabbe et al. in View of Downey

On page 4 of the Office Action, the Examiner rejected claims 7-9, 11, 13-15, 17, 21, 23-25, 27, 29-30, 32-34, 36, 38-41, and 61-62 under 35 U.S.C. § 103(a) as unpatentable over Rabbe et al. in view of Downey. Independent claims 7 and 11 recite “a pedicle screw retainer coupled to at least one of the shaft and the endplate.” Independent claims 21 and 39 (as amended) recite “a pedicle screw retainer coupled to at least one of the shaft, the first endplate, and the second endplate.” Independent claim 32 (as amended) recites “a pedicle screw retainer coupled to at least one of the shaft and the endplate tray.” Independent claim 61 recites “a pedicle screw adapted to secure the vertebral prosthesis to a pedicle.” As discussed in detail above, neither Rabbe et al. nor Downey teach, disclose, or suggest a pedicle screw retainer for a vertebral prosthesis (or, with respect to claim 61, a pedicle screw adapted to secure a vertebral prosthesis to a pedicle). Because not all of the elements are taught or suggested by the cited art, independent claims 7, 11, 21, 32, 39, and 61 and corresponding dependent claims 8-9, 13-15, 17, 23-25, 27, 29-30, 33-34, 38, 40-41, and 62 are patentable over the combination of Rabbe et al. and Downey and are presented for reconsideration and allowance.

VI. Rejection of Claims 61-65 and 68-69 Under 35 U.S.C. § 103(a) Based Upon Strnad et al. in View of Downey

On page 4 of the Office Action, the Examiner rejected claims 61-65 and 68-69 under 35 U.S.C. § 103(a) as unpatentable over Strnad et al., U.S. Patent No. 6,296,665), in view of Downey. Independent claim 61 recites “a pedicle screw adapted to secure the vertebral prosthesis to a pedicle.” Downey does not teach, disclose, or suggest a pedicle screw adapted to secure a vertebral prosthesis to a pedicle. Nor does Strnad et al. On page 5 of the Office Action, the Examiner identifies “a pedicle screw and retainer (202)” in Strnad et al. However, Strnad et al. discloses an “apparatus for spinal fixation 10” having “extended plates 202” and corresponding “apertures 204” that are “adapted to receive cortical or bicortical screws (not shown) for attachment to the vertebral bodies 12” as opposed to a pedicle screw retainer adapted to receive pedicle screws. See Strnad et al. at col. 3, lines 1-4; col. 6, lines 12-14, and Fig. 8a. Because not all of the elements of claim 61 are taught or suggested by the

cited art, independent claim 61 and corresponding dependent claims 62-65 and 68-69 are patentable over the combination of Strnad et al. and Downey and are presented for reconsideration and allowance.

VII. Conclusion

Claims 1, 3, 5-15, 17-18, 21-25, 27-30, 32-34, 36-41, 43, 61-66, and 68-70 are pending in the present application. Claims 10, 12, 18, 22, 28, 37, 43, 66, and 70 are presently withdrawn. The Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application, as amended, is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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By 

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